

2013 IL App (2d) 120085-U
No. 2-12-0085
Order filed December 19, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-1534
)	
CRISTIAN GARZA,)	Honorable
)	Allen M. Anderson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of delivering a controlled substance within 1,000 feet of a senior citizen housing complex, specifically that the location was such a complex on the date of the offense: the testimony of a police officer familiar with the complex was sufficient to show that, during a period including the date of the offense, the complex was used primarily for housing senior citizens.
- ¶ 2 Defendant, Cristian Garza, appeals his convictions of unlawful delivery of 1 or more grams but less than 15 grams of cocaine (720 ILCS 570/401(c)(2) (West 2008)) and unlawful delivery of a controlled substance within 1,000 feet of a senior citizen housing complex (720

ILCS 570/407(b)(1) (West 2008)). The second count specifically alleged that defendant sold cocaine while within 1,000 feet of Burnham Manor, a building or structure used primarily for the housing of senior citizens. Defendant contends that the State failed to show that Burnham Manor was a senior citizen housing complex and that it was such a location on the date of the offense. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged on June 11, 2008, after he sold undercover officers three grams of cocaine at a Marathon gas station in Elgin. That transaction occurred on April 2, 2008. On August 11, 2011, a jury trial was held.

¶ 5 At trial, police officer Craig Tucker testified that he took part in the undercover transaction. Tucker testified that, on August 2, 2010, he used a measuring wheel to determine that the Marathon gas station was 858 feet from Burnham Manor.

¶ 6 Officer Chad Van Mastright testified about his knowledge of the area and stated that Burnham Manor is a 100-unit government-subsidized apartment complex dedicated solely to low-income elderly and disabled persons. Van Mastright said that he had been inside of Burnham Manor “many, many times,” and had seen the residents there, and that 90% of them were elderly females. Specifically, when asked if he was familiar with the “Burnham Manor Senior Citizens Facility,” he stated:

“From 1999 to 2004, I liaised on almost a daily basis with the management group there; and then from 2004 to current, I liaised with them, whenever there is a criminal activity or they have a police related event or incident that they need my help with. So I have been in contact with that same apartment complex manager for the last how many years—from 1999 until now.”

¶ 7 After the State rested its case, defendant moved for a directed finding, arguing that Van Mastright's testimony was insufficient to establish that Burnham Manor was a senior citizen housing complex on the date of the offense. The motion was denied, and the defense rested.

¶ 8 The jury found defendant guilty. The counts were merged, and he was sentenced to 15 years' incarceration. Defendant appeals.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues that the evidence was insufficient to convict him, because the State failed to show that Van Mastright had competent personal knowledge that Burnham Manor was a senior citizen housing complex and was such a location on the date of the offense.

¶ 11 Defendant argues that a *de novo* standard of review applies. However, we review claims of insufficient evidence to determine “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Id.* “[I]t is not the function of this court to retry the defendant.” *Id.* The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). “Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State.” *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and circumstantial evidence is sufficient to sustain a conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 12 Section 401(c)(2) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(2) (West 2008)) makes it a crime to deliver 1 gram or more but less than 15 grams of any substance containing cocaine. A violation of section 401(c)(2) is a Class 1 felony, which is punishable by a term of imprisonment of not less than 4 years and not more than 15 years. 730 ILCS 5/5-8-1(a)(4) (West 2008). Section 407(b)(1) of the Act enhances a section 401(c) (720 ILCS 570/401(c) (West 2008)) offense to a Class X felony if the violation occurs “within 1,000 feet of the real property comprising any of the following places, buildings, or structures used primarily for housing or providing space for activities for senior citizens: nursing homes, assisted-living centers, senior citizen housing complexes, or senior centers oriented toward daytime activities.” 720 ILCS 570/407(b)(1) (West 2008). A Class X felony is punishable by a term of imprisonment of not less than 6 years and not more than 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2008).

¶ 13 Defendant first argues that there was insufficient evidence to establish that Burnham Manor was a senior citizen housing complex. In particular, he contends that it was not established that Van Mastright had sufficient personal knowledge to testify that 90% of the residents were elderly females or that the location was intended to be used as a senior citizen housing complex.

¶ 14 We addressed the ability of an officer familiar with a location to testify about its use in *People v. Morgan*, 301 Ill. App. 3d 1026, 1032 (1998). There, we considered whether a police sergeant’s testimony that an area was a public park was sufficient. We observed that “[i]t is generally understood that persons living and working in the community are familiar with various public places in the neighborhood, such as the location of streets, buildings, and the boundaries of counties and town lots.” *Id.* “Such testimony is justified by the same circumstantial

assurances of trustworthiness inherent in other types of common knowledge by repute.” *Id.* The sergeant was a 10-year veteran of the area police department, was familiar with the area, and had made over 100 arrests there. *Id.* at 1031-32. Under those circumstances, we found the sergeant’s testimony sufficient to establish that the area was indeed a park. *Id.* at 1032. In *People v. Cadena*, 2013 IL App (2d) 120285, ¶¶ 15, 17, we further discussed the issue, noting that there must be a demonstration of how the witness is familiar with the location and the use of it.

¶ 15 Here, under *Morgan*, Van Mastright was competent to testify about the use of Burnham Manor. He testified about his knowledge of the area and his frequent visits to Burnham Manor. He explained how he was familiar with the location and its use and was competent to testify about his observations there.

¶ 16 Defendant next notes that there is no statutory definition of a “senior citizen housing complex” and suggests that we use a definition from the Illinois Municipal Code, which states that “[s]enior citizen housing shall mean housing where at least 50% of the tenants are intended to be of age 55 or older.” 65 ILCS 5/11-29.3-1 (West 2008). Thus, he suggests that, even if Van Mastright could competently testify that the location was dedicated to housing for senior citizens and the disabled and that 90% of the residents were elderly females, there was no evidence that Burnham Manor was intended to be used as housing where at least 50% of the tenants were age 55 or older. However, the Act itself contains guidance for the definition of a senior citizen housing complex, stating that section 407(b)(1) applies when the delivery occurs within 1,000 feet of real property “used primarily for housing or providing space for activities for senior citizens.” 720 ILCS 570/407(b)(1) (West 2008). Burnham Manor was certainly so used.

¶ 17 In *People v. Sparks*, 335 Ill. App. 3d 249, 256 (2002), we examined whether a Salvation Army chapel was a “church” for the purposes of the Act. We observed that the word “church”

was not defined in the Act, but also noted that section 407(b)(2) stated that it applied to a delivery within 1,000 feet of a “ ‘church, synagogue, or other building, structure, or place used primarily for religious worship.’ ” (Emphasis omitted.) *Id.* (quoting 720 ILCS 570/407(b)(2) (West 2000)). Observing that the best guide to interpreting a statute’s meaning is the statute’s own plain language, we concluded that the legislature intended “church” to mean a place used primarily for religious worship. *Id.* In particular, we expressed doubt that the legislature intended to limit the meaning of the term to a building, structure, or place possessing certain specific physical characteristics and nomenclature. *Id.* “Rather, the appropriate focus must be on the manner in which the place is used, *i.e.*, whether its primary use is for religious worship.” *Id.* As a result, we held that the Salvation Army chapel was a “church” because the undisputed evidence established that the sole purpose of the chapel was to conduct religious services. *Id.* at 257.

¶ 18 Here, as in *Sparks*, the statute provides a guide and it states nothing of intent or the specific age of the residents. It simply requires the property to be used primarily for senior citizen housing. Van Mastright testified that Burnham Manor was dedicated solely to elderly and disabled persons. He further testified that he observed the residents and that 90% were elderly females. That was sufficient evidence to allow a rational finder of fact to determine beyond a reasonable doubt that the facility was used primarily for senior housing. Accordingly, Van Mastright’s testimony was sufficient to establish that Burnham Manor was a senior citizen housing complex.

¶ 19 Defendant next argues that, under this court’s decision in *People v. Ortiz*, 2012 IL App (2d) 101261, there was insufficient evidence that Burnham Manor was a senior citizen housing

complex on the date of the offense, because Van Mastright did not specifically testify about its status on that day.

¶ 20 In *Ortiz*, the defendant appealed his conviction of unlawful delivery of a controlled substance within 1,000 feet of a church, contending that the State failed to prove that a building known as the Emmanuel Baptist Church was a church or other building used primarily for religious worship on the date of the offense. *Id.* ¶¶ 9, 11. A police officer testified that the distance from the drug delivery to the Emmanuel Baptist Church was less than 1,000 feet, but did not testify as to the date of the measurement. *Id.* ¶ 11. The State also offered photographs of the building into evidence, but supplied no evidence as to when the photographs were taken or that they accurately represented the building as it appeared on the date of the offense. *Id.* We held that the evidence was insufficient because there was no way of knowing whether the church existed on the date of the offense. *Id.* However, we also noted that the State could have easily established that fact by eliciting testimony from someone affiliated with the church. *Id.*

¶ 21 We discussed *Ortiz* further in *Cadena*. There an officer testified that the Evangelical Covenant Church was an active church. However, there was no testimony to clarify whether it was an active church on the date of the offense. *Cadena*, 2013 IL App (2d) 120285, ¶ 6. We held that the evidence was insufficient to show that the building was a church on the date of the offense. In doing so, we specifically stated that “[e]ven a neighbor, or a police officer who testified to being familiar with the church from having regularly patrolled the neighborhood, would have had sufficient personal knowledge to testify as to the church’s active status.” *Id.* ¶ 18. Absent such evidence, no rational trier of fact could have found the enhancement beyond a reasonable doubt. *Id.*

¶ 22 Here, unlike in *Ortiz* and *Cadena*, where there was no testimony to the use of the location on the date of the offense and nothing that could lead to a reasonable inference of its use, there was testimony that Burnham Manor was a senior citizen housing complex from 1999 through the date of trial. Although Van Mastright did not specifically state that Burnham Manor was a senior citizen housing complex on the date of the offense, he testified that, from 1999 to 2004, he liaisoned on almost a daily basis with the management group there. Then, from 2004 to the date of trial, he liaisoned whenever there was criminal activity or a police-related event or incident. He had been in contact with the same apartment manager from 1999 through the date of trial and stated that Burnham Manor was dedicated solely to senior housing and that 90% of its residents were elderly females. This is the type of testimony that we stated would have been sufficient had it been provided in *Ortiz* and *Cadena*. Under these circumstances, it was reasonable to infer that Burnham Manor was a senior citizen housing complex from 1999 through the date of trial, including on the date of the offense. There was nothing to imply that the use of Burnham Manor changed during that period. Thus, the evidence was sufficient to show that it was a senior citizen housing complex on the date of the offense.

¶ 23 III. CONCLUSION

¶ 24 The evidence was sufficient to show beyond a reasonable doubt that Burnham Manor was a senior citizen housing complex on the date of the offense. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 25 Affirmed.